

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 August 2014

Public Authority: Natural England
Address: Government Buildings
Whittington Road
Worcester, MR5 2LQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of participants taking part in the badger cull in West Gloucestershire and West Somerset.
2. The Commissioner's decision is that Natural England has incorrectly applied regulation 12(5)(a) and 12(5)(g) to the withheld information.
3. The Commissioner requires the public authority to disclose the withheld information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 December 2013, the complainant wrote to Natural England and requested information in the following terms:

"Please provide the number of land holders, for each of the cull zones West Glos & West Somerset, who entered into agreement with Natural England under section 7 of the NERC Act as required by the Culling Policy Requirements specified in the Defra's Guidance to Natural England on Licences to Kill or Take Badgers, para 4, para 9.h.i

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69464/pb13692-bovinetb-guidance-ne.pdf

6. Natural England responded on 18 December 2013 and refused to provide the requested information citing regulations 12(5)(a) and 12(5)(g) of the EIR as its basis for doing so.
7. Following an internal review Natural England wrote to the complainant on 17 February 2014 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 17 March 2014 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if Natural England has correctly applied the exceptions it has cited.

Reasons for decision

10. Regulation 12(5) of the EIR states that, for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – (a) international relations, defence, national security or public safety and (g) the protection of the environment to which the information relates.
11. Natural England explained there are currently two pilots running under the Government's Badger Control Policy, one in West Gloucestershire and one in West Somerset.

12. Farmers and land managers that have entered a section 7 Natural Environment and Rural Communities Act (NERC) agreement to allow their land to participate in the cull are called participants.

Regulation 12(5)(a) – public safety

13. Natural England stated that unfortunately, some protestors can and will use any means available to them to disrupt the licensed activity. Natural England takes the view that the release of the number of participants will lead to an increase in the level of harassment and intimidation that the participants are being exposed to, as it will act as an incentive/motivator for the protestors. Using this and other information in their possession including information which is already publicly available, the protestors would be able to better target their campaign of harassment and intimidation.
14. The actions taken by protestors so far include threats, intimidation and physical violence, not just to the participants themselves, but also their families and to their property. Natural England considers releasing this information puts participants at increased risk for example from acts of sabotage or interference. It could also place members of the public at risk, and potentially undermines the security of the licensed activity as well as the data collected.
15. Natural England stated that the main purpose of the protestors' campaign is to try and force participants to pull out. There is a minimum threshold of participating land in the cull area of 70%. If a participant drops out because of harassment or intimidation it will affect the percentage of participating land. Due to the landholding sizes a loss of a very small number of landowners or one or two large landowners could cause a drop below 70%.
16. The Badger Control Policy is a highly sensitive issue and has provoked considerable public interest and debate, and Natural England stated it has been advised by the police and the specialist units within the Police of the potential disruptive element.
17. Natural England also drew the Commissioner's attention to the fact that whilst culling activity in the pilot areas has ceased for this year, the licence runs for four years with a cull expected to take place over a six week period in the open season in each of these years. This means the information requested has relevance this year and in subsequent years.
18. Natural England provided recent pages from the blog site 'Stop the Cull' which shows the protestors' intention to make landowners withdraw their land in order to stop the licensed activity. Natural England also

referred the Commissioner to the protesters' other main websites:
<http://badger-killers.co.uk> and <http://morethanjustbadgers.net>

19. Natural England also provided anecdotal accounts of harassment and stated it considers that the release of the requested information would impact adversely upon the protection of private property, public buildings and the health and safety of participants undertaking a lawfully licenced activity.
20. This view is also supported by the High Court injunction granted to the National Farmers Union that restricts people protesting against the badger control policy, <http://www.bbc.co.uk/news/uk-england-23791222>
21. Natural England considered the public safety exception 12(5)(a) is engaged to prevent the escalation of the harassment and intimidation of participants undertaking a lawful activity.

Adverse effect under regulation 12(5)(a)

22. To successfully apply Regulation 12(5) a public authority must also show that disclosure "would" have an adverse effect - not that it could or might have such an effect.
23. The Commissioner has considered the withheld information and has noted that it simply consists of two numbers.
24. The Commissioner does not accept that disclosure of this information would adversely affect public safety. He has also considered whether disclosure of this information would adversely affect individual participants.
25. It is the Commissioner's view that individual participants would not be identifiable from the withheld information, therefore the threshold of 'would' have an adverse effect has not been met. Consequently the Commissioner does not consider the exception is engaged.
26. As the exception is not engaged, the Commissioner is not required to consider the public interest. He has next gone on to consider the application of regulation 12(5)(g).

Regulation 12(5)(g) - protection of the environment

27. Natural England considered the protection of the environment exception 12(5)(g) is engaged because he requested information would enhance the protesters' ability to disrupt the operation of the Badger Control

Policy which has been introduced to reduce the incidences of bovine TB and control its spread. It argues that such disruption would undermine the evidence base for assessing the impact of the policy.

28. The Commissioner acknowledges the purpose of the policy is to try to prevent the spread of bovine TB. He also acknowledges that it is arguable that an increase in the disease would likely be harmful to the environment. However, it is not clear that there is any direct link between the withheld information and the ability of protesters to disrupt the operation of the policy as the relevant land cannot be identified from the numbers.
29. Even if such a link could be demonstrated, it is not clear that the sort of disruption envisaged would adversely affect the environment for the purposes of regulation 12(5)(g).
30. The exception is therefore not engaged. In these circumstances the Commissioner is not required to consider the public interest test and the requested information should be disclosed to the complainant.

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF